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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.                      | CONFIRMATION NO.                   |
|---|-------------|----------------------|--|------------------------------------|
| 10/573,521  | 03/23/2006  | Kent D. Pearson      | PRSN-POOL2                               | 5467                               |
| <div>7590      06/14/2007<br/>Robert M Ashen<br/>1737 Franklin Canyon Drive<br/>Beverly Hills, CA 90210</div> |             |                      | <div>EXAMINER<br/>ARYANPOUR, MITRA</div> |                                    |
|   |             |                      | <div>ART UNIT<br/>3711</div>             | <div>PAPER NUMBER</div>            |
|   |             |                      | <div>MAIL DATE<br/>06/14/2007</div>      | <div>DELIVERY MODE<br/>PAPER</div> |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/573,521

Applicant(s)

KENT PEARSON; MELANIE PEARSON

Examiner

Mitra Aryanpour

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*. See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-12, drawn to an improved multilevel game apparatus, classified in class 473, subclass 10.
  - II. Claims 13-17, drawn to method of playing a multilevel game apparatus, classified in class 473, subclass 14.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus does not require an intermediate surface having a bidirectional pocket in communication with conduits to both higher and lower surfaces.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Robert Ashen on 09 June 2007 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-17

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

5. The drawings are objected to because Figure 19 is missing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson (6,712,710) in view of Cahill (2,018,833).

Regarding claim 1, Pearson shows a multilevel game apparatus substantially as claimed including a plurality of playing surfaces having raised boundaries (see figures 1 and 2) and pockets (28); support structure (25) and at least one spiral-shaped conduit (40). Pearson does not disclose expressly the inclusion of accelerator plates. Cahill shows a game apparatus for use in a billiard type game, the game surface includes chutes (C and C1). Cahill teaches the inclusion of a secondary material in order to create different friction surface (see page 3, column 1, lines 50-58). In view of Cahill it would have been obvious to one of ordinary skill in the art to have provided different surfaces on Pearson's game surface, the motivation being to create different friction surfaces.

Regarding claim 2, Pearson shows the conduit (40) is generally curvilinear in shape (see figures 2-3).

Regarding claims 3-5, as best seen from the figures Pearson shows the conduit (40) includes a transition ramp (see figure 6) and an overhang () wherein the overhang includes projecting ribs ().

Regarding claim 6, Pearson further shows the conduit (40) includes an operable guide (guide means 60) including a generally horizontal game piece guide (see figure 6).

Regarding claim 7, Pearson shows the game piece (30) is substantially spherical.

Regarding claim 8, Pearson shows the game apparatus includes a stick (34).

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Regarding claim 9, Pearson shows the stick is a cue stick but does not disclose expressly the length of the cue stick. The Examiner takes Official Notice that it is old and well known that cue sticks come in a variety of lengths and are commonly greater than 30 inches.

Regarding claim 10, Pearson does not disclose expressly the game piece being a disc. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide a disc-shaped game piece, because Applicant has not disclosed that providing a disc-shape game piece, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the game piece taught by Pearson or the claimed disc shaped game piece because both game pieces perform the same function. Therefore, it would have been an obvious matter of design choice to modify Pearson to obtain the invention as specified in claim 10.

Regarding claim 11, Pearson does not disclose expressly the playing surfaces being reversible. The Examiner takes Official Notice that it is old and well known in the game art to utilize both sides of a playing surface in order to playing a variety of different games.

Regarding claim 12, Pearson shows the conduit and playing surface are formed of molded plastic (column 3, lines 28-30 and 34-35).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Tuesday-Thursday 10:00 to 6:00.

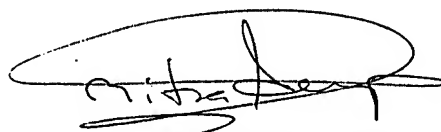
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA

09 June 2007



**MITRA ARYANPOUR**  
**PRIMARY EXAMINER**